

**SMALL BUSINESS ENTERPRISE (SBE) PROGRAM
FOR PURCHASE OF GOODS AND SERVICES
PROCEDURES**

SUMMARY

This Small Business Enterprise (“SBE”) Program shall apply to all County and Public Health Trust contracts for the purchase of goods and services, including professional services. The SBE Program shall not apply to leases or rental of real property; licenses and permits; concessions; franchise agreements; and contracts for attorney and/ or legal services; and contracts for investment banking services.

It is the policy of Miami-Dade County that a minimum of 5% of the total value of contracts \$50,000 and under be awarded to Micro Enterprises; Small Business Enterprise Measures may be applied to contracts greater than \$50,000.

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CERTIFICATION

The following is a summary of the procedures involved in certifying firms as SBEs. This section outlines staff responsibility, certification and size eligibility and the process used to determine affiliation.

Certification Responsibilities

1. DBD shall maintain and publish at least monthly an updated list of SBEs/Micro Enterprises, identifying each listed SBE/Micro Enterprise based on each NAICS/NIGP Commodity Code by which the SBE/Micro Enterprise is registered.
2. DBD shall collect, analyze and verify all information needed to establish the eligibility of an applicant and continued eligibility of SBEs/Micro Enterprises.
3. DBD shall attempt to make a certification decision within twenty (20) calendar days of receipt of a completed application. An application is complete when it includes all required supporting documents.
4. DBD shall not certify an applicant, shall not re-certify a SBE/Micro Enterprise, and shall decertify a SBE/Micro Enterprise who:
 - a. Fails to comply with the criteria or procedures of the SBE Ordinance, this Administrative Order and/or participation provisions;
 - b. Fails to complete the application process;
 - c. Fails to provide full disclosure;
 - d. Falsifies information;
 - e. Has been debarred by the County;
5. DBD shall certify each SBE/Micro Enterprise by the type of good and/or service it provides in accordance with the applicable NAICS/NIGP Commodity Codes. DBD shall provide written renewal procedures and/or forms to certified SBEs/Micro Enterprises no later than thirty (30) calendar days prior to their certification expiration date. DBD's failure to provide the form does not extend the firm's certification beyond the expiration date.
6. DBD shall give written notice, including the reasons for its decision to applicants who are denied certification and to SBEs/Micro Enterprises who are decertified or denied recertification.
7. DBD may require applicants and SBEs/Micro Enterprises to submit information regarding their business operations including, but not limited to, a breakdown of the applicant's or SBEs/Micro Enterprise's ownership and gross annual sales receipts.

8. A SBE/Micro Enterprise can be certified in more than one NAICS/NIGP Commodity Codes.

Certification Process

1. Interested parties may obtain the certification application from DBD and are encouraged to request an explanation of the certification process. A copy of the certification application and an explanation of the certification process are also available on DBD's Web Page through the County's Internet Portal. The Web Page address is <http://www.miamidade.gov/dbd>.
2. The applicant shall complete the certification application and submit it with all requested documentation to DBD.
3. All applicants, including SBEs/Micro Enterprises seeking recertification or a change of status, shall attend, if requested by DBD staff, an Eligibility Review Meeting (ERM) to clarify information that was submitted in the application and accompanying documents or to gain additional information regarding the applicant's eligibility for certification. DBD shall notify applicants within fifteen (15) business days of receipt of a complete application if an ERM is required.
4. All applicants, including SBEs/Micro Enterprises seeking recertification or a change of status, shall allow site visits by DBD staff to gain additional information regarding compliance with eligibility requirements. DBD shall notify applicants within fifteen (15) business days of receipt of a complete application if a site visit is required.
5. All applicants shall provide DBD with all information that DBD reasonably requests to determine eligibility for certification.

Certification Eligibility Requirements

1. Applicants and SBEs/Micro Enterprises must be profit-motivated businesses. Not-for-profit or non-profit corporations are not eligible for certification.
2. SBEs/Micro Enterprises must have an actual place of business in Miami-Dade County and must be registered as a vendor with the Department of Procurement Management (DPM.)
 - a. When determining whether the applicant has an actual place of business in Miami-Dade County, DBD shall consider evidence such as, but not limited to:
 - 1) If the principle place of business is not located in Miami-Dade County, then the 51% majority owner(s) must reside in Miami-Dade County.
 - 2) The existence of a Miami-Dade County telephone number in the name of the SBE/Micro Enterprise or the name with which the SBE/Micro Enterprise is doing business;
 - 3) Offices, premises related to business, or other facilities within Miami-Dade County at which the goods or services to be provided are produced or performed;

- 4) The existence and location of secretarial or other administrative staff;
 - 5) The existence of other offices or premises at which the same business is conducted;
 - 6) The possession of licenses required to conduct the business in Miami-Dade County;
 - 7) The location at which the business records of the applicant firm are maintained;
 - 8) The location at which the individual who manages the day-to-day operations spends the majority of his/her working hours.
3. A SBE/Micro Enterprise must perform a commercially useful function in the trade, commodity, or service area in which it is certified or seeking to be certified.
 4. An individual, alone or as a member of a group, shall own or control only one (1) SBE/Micro Enterprise at a time.
 5. A firm's eligibility to participate in the SBE/Micro Enterprise program shall be determined based on the average annual gross revenues for the last three (3) years, in combination with that of all of the firm's affiliates, if any. Representations as to gross revenues shall be subject to audit. In order to be eligible for Micro Enterprise certification, a firm's three-year average gross revenues cannot exceed \$2 million, except manufacturers whose number of full-time, permanent employees cannot exceed 50 and wholesalers whose number of full time employees cannot exceed 15 or less permanent employees. In order to be eligible for SBE certification, a firm's three-year average gross revenues cannot exceed \$5 million, except manufacturers and wholesalers whose number of full-time, permanent employees cannot exceed 50 or less. Representations as to gross revenues shall be subject to audit by DBD.
 6. Nothing shall prohibit SBEs/Micro Enterprises from competing for contracts under the Federal Disadvantaged Business Enterprise (DBE) program or any other business assistance program if the SBE/Micro Enterprise is also certified for the programs under this Administrative Order by DBD or certified by any other agency or organization.
 7. When investigating the ownership and control of an applicant or an SBE/Micro Enterprise, DBD shall consider, but not be limited to, the following:
 - a. All securities constituting ownership and/or control of a business for purposes of establishing the business as an SBE/Micro Enterprise shall be held directly by the owners. Securities held in trust shall not be considered, with the exception of the following instances:
 - 1) The beneficial owner of the securities or assets held in trust and the trustee are the same person;
 - 2) The beneficial owner of the trust exercises effective control over the management, policy-making, and daily operations of the firm;

- 3) Assets held in a revocable living trust may be counted only in the situation where the same individual is the sole grantor, beneficiary, and trustee.
- b. The contributions of capital and expertise by the owner(s) to acquire interest in the business shall be real and substantial. Examples of insufficient contributions include, but are not limited to, a note payable to the business or to those of its part-owners, or the mere participation as an employee, rather than as a manager.
8. Where the actual day-to-day management of the business is handled by individuals other than the owner, those persons who have the ultimate power to hire and fire the employees shall be considered as controlling the business.
9. A SBE/Micro Enterprise shall not be subject to any formal or informal restrictions that limit the customary discretion of the SBEs/Micro Enterprise's owner.
10. An applicant that has undergone a recent change in ownership, control or reported income level will be carefully scrutinized. Factors such as, but not limited to, the following shall be considered:
 - a. The reasons for the timing of the change in ownership of the business;
 - b. Whether reported income levels indicate a severe decline to possibly attempt to qualify the firm for SBE/Micro Enterprise certification;
 - c. Whether an individual identified as an owner who had previous or continuing employee-employer relationship with present owners has actual management responsibilities and capabilities;
 - d. The participation of one or more owners of the applicant firm in another firm in the same trade, commodity, or service area;
 - 1) Whether affiliation as described under the "Certification Size Determination Section" of these policies and procedures exists or once existed between the applicant firm and a non-SBE/Micro Enterprise.
11. A business or individual that acts as a distributor of goods may be eligible for SBE/Micro Enterprise certification if all of the following conditions exist:
 - a. The applicant shall be an authorized representative of a manufacturer, or supplier
 - b. The applicant shall personally be responsible (i.e. maintains inventory or collects payment or take ownership for goods being sold), and therefore, adds economic value to the transaction.
12. In addition to the above standards, special consideration shall be given to the following circumstances in determining eligibility:

- a. Newly formed firms are scrutinized to determine the reasons for the timing of their formation.
- b. A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.
- c. Any relationship between the applicant firm and a business which is not SBE/Micro Enterprise certified, which has an interest in the applicant firm is carefully reviewed to determine if the interest of the non-SBE/Micro Enterprise conflicts with the ownership and control requirements for certification.

Certification Size Determination

Only small firms that meet size limits of SBEs/Micro Enterprises as to average annual gross revenues for the last three years or - in the case of manufacturers and wholesalers - the number of full-time, permanent employees, may be certified as SBEs/Micro Enterprises. Size determinations for SBEs/Micro Enterprises certification eligibility shall take into account the combined gross revenues of the applicant firm and all of its domestic and foreign affiliates or - in the case of manufacturers and wholesalers – the number of full-time, permanent employees of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included.

Affiliation

1. Affiliation: Firms are considered affiliates of each other when either directly or indirectly:
 - a. One firm controls or has the power to control the other, or
 - b. A third party or parties controls or has the power to control both, or
 - c. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. Variations of these factors are examined more closely below:
 - a. Nature of control in determining affiliation
 - 1) Every firm is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

- 2) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.
 - 3) Control can arise through management positions where a firm's vote stock is so widely distributed that no effective control can be established.
- b. Identity of interest between and among persons as an affiliation determinant. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one firm. In determining who controls or has the power to control a firm, person(s) with an identity of interest may be treated as though they were one person.
- c. Affiliation through stock ownership.
- 1) A person is presumed to control or have the power to control a firm if he or she owns or controls or has the power to control fifty-one (51) percent or more of its voting stock.
 - 2) A person is presumed to control or have the power to control a firm even though he or she owns, controls or has the power to control less than fifty (50) percent of the firm's voting stock, if the block of stock he or she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.
 - 3) If each of two or more persons owns, controls or has the power to control less than fifty (50) percent of the voting stock of a firm; such minority holdings are equal or approximately equal in size; and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each such person individually controls or has the power to control the firm; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.
 - 4) Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the firm. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held there under had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another firm before it actually does so.
- d. Affiliation under voting trusts.
- 1) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a firm in order that such firm or another firm may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the

- appropriate jurisdiction. However, if a voting trust is primarily entered into for a legitimate purpose other than that described above, and it is recognized within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination.
2. Agreements to divest (including agreements in principle) are not considered to have a present effect on the power to control the firm.
 - e. Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another firm.
 - f. Affiliation through common facilities. Affiliation generally arises where one firm shares office space and/or employees and/or other facilities with another firm, particularly where such firms are in the same or related industry or field of operations, or where such firms were formerly affiliated.
 - g. Affiliation with a newly organized firm. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one firm organize a new firm in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the firm is furnishing or will furnish the other firm with sub-consulting agreements, financial or technical assistance, proposal or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.
 - h. Affiliation through contractual relationships. Affiliation generally arises where one firm is dependent upon another firm for consulting agreements and business to such a degree that its economic viability would be in jeopardy without such agreements/business.
 - i. Affiliation under joint venture arrangements
 - 1) A joint venture for size determination purposes is an association of firms and/or individuals, with interests in any degree or proportion, formed by agreement, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.
 - 2) For the purpose of financial assistance to a joint venture, the parties thereto are considered to be affiliated with each other. Where the financial assistance, however, is to a firm for its own use, outside the joint venture, an affiliation determination shall not automatically arise from the existence of the joint venture arrangement. In this

- latter situation, the existence of affiliation shall be determined under these regulations.
- 3) Firms proposing on a particular agreement as joint ventures are affiliated with each other with regard to performance of the agreement. This determination of affiliation does not extend to other contracts or business outside the joint venture arrangement.
 - 4) An ostensible sub-consultant which performs or is to perform primary or vital requirements of an agreement may have such a controlling role that it must be considered a joint venture affiliated on the agreement with the prime consultant. In determining whether sub-consulting arises to the level of affiliation as a joint venture, DBD considers whether the prime consultant has unusual reliance on the sub-consultant.
 - 5) Even though a firm might not be an affiliate of its joint ventures for the purpose of operations apart from the joint venture, it nevertheless must include its proportionate share of the joint venture receipts or employees in determining its eligibility under the size standards.
- j. Affiliation under franchise and license agreements. In determining whether the franchiser controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints, relating to standardized quality, advertising, accounting format and other provisions, imposed on a franchisee by its franchise agreement shall generally not be considered, provided that the franchise has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though the franchiser by virtue of such provisions may not control a franchisee in the franchise agreement, control and, thus, affiliation could arise through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

Gross Annual Revenues

1. In size determinations, size eligibility requires that the firm may not exceed the three year average gross annual revenues in the applicable standard.
2. Definitions. For the purpose of determining annual gross revenues of a firm:
 - a. "Accrual Basis" means a method of accounting in which accounts and notes receivable are recorded in the regular books of account for the period in which the firm first has a claim of right to them.
 - b. "Claim of Right" has the meaning attributed to it by the U.S. Internal Revenue Service (IRS).
 - c. "Gross Revenues" is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances.

- d. "Regular Books of Account" means the general ledger or other book of final entry and, if used, the journals or other books of original entry.
- e. "Completed Fiscal Year" means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.
- f. Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

3. Period of measurement.

- a. Annual Gross Revenues of a firm which has been in business for three (3) or more completed fiscal years means the arithmetic annual average revenue of the firm over its last three (3) completed fiscal years (total revenue compiled over the entire three (3) year period would be divided by three).
- b. Annual Gross Revenues of a firm which has been in business for less than three (3) fiscal years means the arithmetic annual average revenue over the time period the firm has been in business (total revenues compiled over the period the firm has been in business, divided by the number of weeks, including fractions of a week, the firm has been in business, multiplied by 52).
- c. Annual Gross Revenues of a firm which has been in business three or more years but has a short year in the last three years will be the arithmetic annual average revenue over the two full years and the short year. The short period may appear at the beginning, middle or end of the three year calculation period.

4. Method of determining annual gross revenues.

- a. Revenue may be taken from the regular books of account of the firm. If the firm so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the firm, then revenues shown on the federal income tax return of the firm may be used in determining annual gross revenues. Revenue shown on the regular books of account or the Federal Income tax return on a basis other than accrual must be restated to show revenue on an accrual basis for all fiscal years.
- b. Where the federal income tax return of a firm shows its annual gross revenues to be less than seventy-five (75) percent of the applicable size standard, the firm need not restate its revenue to an accrual basis prior to determining annual revenues.
- d. Where a short period is included in the firm's most recent three (3) years, annual gross revenues are calculated by dividing the sum of the revenues of the short year and the revenues of the two (2) full fiscal years by the sum of the number of weeks in the short fiscal year and the number of weeks in the two full fiscal years, and multiplying that figure (the weekly average revenues) by fifty-two (52).

5. Annual gross revenues of affiliates.

- a. If a firm has acquired an affiliate or been acquired as an affiliate during the applicable averaging period or before certification, the annual gross revenues in determining size status include the revenues of both the applicant and the affiliate. Furthermore, this aggregation of the revenues of both the applicant and its affiliates applies for the entire applicable averaging period used in computing size (usually the preceding three (3) complete fiscal years) rather than only for the period after the affiliation arose.
- b. The annual gross revenues of a firm which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding three complete fiscal years), but was not an affiliate at the time of certification, are not included within the computation of annual gross revenues in making size determinations. This exclusion of annual gross revenues of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased.

6. Annual gross revenues and adjusted gross revenues of affiliates.

- a. The annual gross revenues and adjusted gross revenues of affiliates shall be included in determining size status of the applicant.
- b. Payments to an affiliate that has been used as a sub-consultant by the applicant shall not be counted as documented payment used to adjust the gross revenues of the applicant.

Employees

1. The term employees means all individuals employed on a full-time, part-time, temporary, or other basis. Such other basis may exist, for example, where individuals are provided by an independent employment contractor in an apparent effort to circumvent these regulations. The totality of the circumstances should be considered in determining whether employees of an independent contractor are employed on *another basis* including but not limited to:
 - a. Did the company engage and select the employees?
 - b. Does the company pay the employees wages and/or withhold employment taxes and/or provide employment benefits?
 - c. Does the company have the power to dismiss the employees?
 - d. Does the company have the power to control and supervise the employees' performance of their duties?
 - e. Did the company procure the services of the employees from any employment contractor involved in close proximity to the date of certification application?

- f. Does the company dismiss employees from its own and replace them with employees from any employment contractor involved? Were they replaced soon after their dismissal by the company?
 - g. Are the individual employees supplied by any employment contractor, the same individuals that were dismissed by the company?
 - h. Do the employees possess a type of expertise or skill that other companies in the same or similar lines of business normally employ in-house as opposed to procuring by sub-contract or through an employment contractor?
 - i. Do the employees perform tasks normally performed by the regular employees of the business or which were previously performed by the company's previous employees?
 - j. Were the employees procured through an employment contractor to do more than fill in for regular employees of the company who are temporarily absent?
 - k. Does the contract with the independent contractor have a term based on the term of an existing Government contract?
2. In the size determinations where the standard is number of employees, size eligibility requires that the firm may not exceed the number of employees in that standard.
- a. Number of employees means the average employment of the firm, including employees of its domestic and foreign affiliates, based upon employment during each of the pay periods for the preceding completed twelve (12) calendar months.
 - b. In computing average employment, part-time and temporary employees are not to be counted as full-time, permanent employees.
 - c. If a firm has not been in business for twelve (12) calendar months, number of employees means the average employment of the firm, including affiliates, during each of the pay periods which it has been in business.
 - d. If the firm has acquired an affiliate or has been acquired as an affiliate during the applicable averaging period or before certification application, the number of employees in determining the size status includes both the applicant firm and the affiliate(s). Furthermore, this aggregation of the employees of both the applicant and its affiliate(s) applies for the period used in computing the size [usually, the preceding twelve (12) calendar months] rather than only for the period after the affiliation arose.
 - e. The employees of a firm which had been an affiliate of the applicant firm during part of the period used in determining size [usually, the preceding twelve (12) calendar months], but was no longer affiliated at the time of certification application, are not included within the computation of the number of employees in making size determinations. This exclusion of a former affiliate applies during the entire period used in computing the size.

MANAGEMENT AND TECHNICAL ASSISTANCE

The following is a summary of the procedures involved for a Technical Assistance Coordinator (TAC) to conduct an Intake Pre-Screening Meeting for perspective firms that are interested in certifying as SBEs with the Department of Business Development (DBD). This section will also provide a summary of the needs/assessment meeting (NAM) which is an informational session provided to firms once they certify with the SBE Program.

1. If a firm is interested in being certified as a SBE/Micro Enterprise, DBD will provide a pre-screening intake meeting to determine their interest in the department's programs or refer them to other agencies and/or DBD partners that can assist them in the event that they request services that DBD does not offer. This will assist the department in making accurate determinations when assisting firms.
2. Once a firm becomes certified as a SBE or Micro Enterprise, it will be required to fill out an agreement with Business Assistance Division in which it will be required to attend quarterly needs/assessment meetings (NAMs). They will also be required to attend community outreach events such as monthly organizational and informational forums that will take place on an ongoing basis. Failure to participate as required by DBD may result in a firm being decertified.
3. The needs/assessment meeting is an informational session provided to participating SBE and Micro Enterprise firms newly certified with DBD. Other programmatic needs of the firm are identified such as; financial, technical and managerial training and any other business needs that they may require while enrolled in the SBE program.

Intake Pre-Screening Meeting

This section will describe the procedure for the Intake-Prescreening meeting that is conducted with SBE program applicants.

1. First-time visitors, walk-ins and phone inquiries in reference to the functions of the Department of Business Development are referred to the Management and Technical Assistance (MTA) Unit.
2. The firm's representatives/agents are referred to a Technical Assistance Coordinator (TAC) who conducts an intake meeting.
3. Once needs have been determined; representatives/ agents are referred to appropriate personnel who will assist them in the aforementioned area of needs.
4. Set-up follow-up appointment (Only if deemed necessary)
5. Inquiries in reference to starting a business and financial assistance are referred to the appropriate agencies that can assist them in that manner.

Procedure for Initial Needs/Assessment Meeting

The following addresses the procedure for the Technical Assistance Coordinator (TAC) in conducting the needs/assessment meeting (NAM). The two types of NAMs that are conducted with potential SBE firms are the initial and follow-up. The Initial Nam is the first meeting which a Technical Assistance Coordinator (TAC) conducts with a SBE firm once it has certified with the Department. Follow-up NAMs are conducted after the firm's initial meeting on a quarterly basis or upon request. The purpose of this meeting is to evaluate (1) possible needs for the business such as: business plan development, bonding and financial assistance, etc. and (2) the firm's interest in SBE Program Components including but not limited to: Mentor-Protégé Program, DBD Annual Conference, Monthly Forums, Seminars, Workshops, etc.

1. The NAM is conducted by the Technical Assistance Coordinator (TAC) of the MTA Unit and should last, on average, one (1) hour.
2. Completion of Initial Needs/ Assessment Interview Form.
3. The TAC should discuss the following:
 - a) Purpose of intake
 - b) Role of MTA
 - c) Quarterly requirement for follow-up meetings
 - d) Contracting opportunities with Miami-Dade County
 - e) Re-certification
 - f) Business Plan & Financial Statements
 - g) Accounting Reimbursement Programs
 - h) Participation levels for SBE Program
 - i) Pre-Award and Post-Award compliance if awarded a Miami-Dade County Contract (Refer to Business and Professional Development Unit)
 - j) SBE Program Violations and Sanctions (Refer to Contract Review and Compliance Unit)
 - k) Bonding (if applicable)
 - l) Graduation from SBE Program
4. The TAC shall ask questions and document responses on the history and development of the firm.

5. The TAC shall document any present and past problems of the firm.
6. TAC shall also discuss and document short term goals and projections.

Follow-up Need/Assessment Meeting (NAM) with Certified Firms

1. For follow-up NAM the firms should complete the Needs/Assessment Form in order to determine if needs have changed.
2. The TAC shall make an evaluation of the specific needs of the firm.
3. The TAC may recommend participation in one or more of the following areas:
 - a) Mentor-Protégé Program
 - b) Bonding and Financial Assistance Program (if needed)
 - c) Business Plan Preparation
 - d) SBE Forums and/or Seminars Available
4. The TAC may also determine if other programs available through the County will benefit the firm such as:
 - a) Bid Preparation classes sponsored by the Department of Procurement Management (DPM)
 - b) Resources offered by the Entrepreneurial Institute
 - c) Other County resources such as the Empowerment Trust and opportunities with the Office of Community and Economic Development (OCED)
 - d) Any other program that the TAC believes will benefit the firm

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BONDING AND FINANCIAL ASSISTANCE

If Bonding Assistance is identified as a need, the Program participant will provide all the necessary documentation to complete a Bonding Assistance application.

1. Required Documentation

DBD staff shall assist the Program participant in preparing and completing the bond package using the following forms:

- a. Bond Application
- b. Income Statement
- c. Schedule of Accounts Payable (if required)
- d. Schedule of Accounts Receivable (if required)
- e. Schedule of Contracts under construction
- f. Schedule of Contracts completed
- g. Contractor's estimate of subject job
- h. Certificate of Insurance
- i. Escrow Agreement (if required)
- j. Assignment of Contract proceeds agreement (if required)
- k. Agreement of General Indemnity
- l. Business Plan
- m. Any other information or forms required by the Program that is adopted by the County Commission or is required under the terms of the contracts awarded to implement the Program.

2. Bond Application Review Process

Upon completion of the bond application package, DBD staff shall review the package for completeness and thereafter submit same to the entities with whom the County contracts for the Program. Any additional information required by such entities shall be requested in writing directly from the SBE/Micro Enterprise with a copy of such request sent to DBD staff. DBD staff shall be notified in writing of the approval status of the bond application.

3. DBD staff shall also:

- a. Provide interested SBEs/Micro Enterprises with adequate information about the requirements of the Bonding program;
- b. Coordinate and provide ongoing services between the County, vendors and bonding companies;
- c. Attend and actively participate in periodic meetings with County staff and vendors and report the status of the Bonding Assistance Program and explain any changes that may enhance or detract from the program;
- d. Prepare quarterly progress reports which shall describe significant achievements and issues;

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BUSINESS AND PROFESSIONAL DEVELOPMENT

Review of Procurement Projects

Prior to advertisement, each project, purchase, or blanket purchase of goods or service in excess of fifty thousand dollars (\$50,000), shall be reviewed for the application of contract measures.

1. Issuing department//DPM shall submit projects to DBD for review of the application of measures and shall work in conjunction with DBD in making a recommendation. DBD shall seek concurrence with the issuing and/or user department/DPMs when making a recommendation.
2. Each issuing department/DPM procuring goods and or services or DPM as applicable, shall review anticipated projects and make a recommendation to DBD for the application of contract measures. To facilitate identification of commodity or service opportunities, projects shall be reviewed for measures, by DBD at or after approximately seventy-five (75) percent of the contract documents, plans, and specifications have been completed.
3. The Issuing department/DPM or DPM shall submit the following to the Director of DBD:
 - a. Brief description of the project
 - b. Requisition number and applicable commodity code
 - c. Recommended small business measures
 - d. Estimated dollar amounts for each commodity;
 - e. Estimated contract value.
4. Issuing department /DPM shall advise DBD of any contract advertisement dates that are in excess of 120 days of the initial RC recommendation to apply a set aside or a goal to the contract, to allow DBD to identify any changes in availability. If availability remains unchanged, upon notification by

Application of SBE Contract Measures

The process that DBD conducts when determining availability of SBEs when making a recommendation of a set aside or subcontractor goal

1. Set-asides are appropriate when:
 - a. prior to bid advertisement, there are at least three (3) available SBEs to perform the set-aside contract.

- b. DBD will send an availability letter that includes, the scope of work, the contract specification and any other documents to the firm to establish availability
- c. A set aside may be recommended when:
 - 1) The type and quality of opportunities provided by the project are appropriate; and
 - 2) Prior to advertisement three (3) or more SBEs are available to fulfill the requirements of the project in its entirety; and

2. Subcontractor Goals:

- a. Subcontractor goals may be applied to a contract based on estimates made prior to bid advertisement of the quality, quantity and type of opportunities provided by the contract, and the availability of SBEs to perform such work.
- b. A recommendation to apply a subcontractor goal is appropriate when:
 - 1) The project has identifiable opportunities according to normal industry practice which are appropriate for subcontracting in a specific area within commodity codes Standards; and
 - 2) The quality and type of opportunities provided are appropriate for applying a subcontractor goal.

Review of Procurement Projects for Pre-Award Compliance

The Compliance Monitor shall review bids for compliance with this Administrative Order 3-41 on every project on which a SBE set aside or subcontractor goal has been applied. The purpose of this review shall be for the Compliance Monitor to consider whether to recommend if the bidder complies with the requirements. The Compliance Monitor may consider relevant information from the issuing department and/or user department, subcontractors and the bidder/proposer in making this decision. The Compliance Monitor may require the bidder to produce information deemed pertinent and appropriate.

- 1. Bid documents shall require bidders to submit a signed subcontractor agreement (agreement) at the time of bid submission identifying all SBEs to be utilized to meet the subcontractor goal, the commodity code of the work each will perform, and the percentage of such work. Bidders shall be allowed up to 48-hours after bid submission to cure correctable defects on the agreement. Bidders/proposers failing to correct defects within 48 hours may be deemed non responsive. Failure to submit the required agreement at the specified time shall deem the bid/proposal non responsive.
- 2. The purpose of this review shall be for the Compliance Monitor to consider whether to recommend if the bidder complies with the requirements set forth herein. The Compliance Monitor may consider relevant information from the issuing department and/or DPM,

subcontractors and the bidder/proposer in making this decision. The Compliance Monitor may require the bidder to produce information deemed pertinent and appropriate.

3. The Compliance Monitor shall notify the bidder in writing stating the facts and reasons on which the non-compliance is based. The bidder may request a meeting within five calendar days from the date of notification of non-compliance, with the Compliance Monitor and Contracting Officer to state its reasons for non compliance.
4. When requested by the bidder, the Compliance Monitor shall schedule a meeting to hear the bidder's reasons for non-compliance.
5. The Compliance Monitor shall make a written recommendation to the Contracting Officer, which shall include a statement of facts and reasons for which the non-compliance is based.

Bidder's Responsibilities for Compliance with Sub-Contractor Goals

Bid documents to which a SBE subcontractor goal is applied shall require bidders to submit a signed agreement at the time of bid submission identifying all SBEs to be utilized to meet the SBE subcontractor goal.

1. Each agreement shall be in writing and shall specify the scope of work and commodity code the SBE will perform if appropriate, including the type goods or services the SBE will provide. Bidders/proposers shall be allowed up to 48-hours after bid submission to cure correctable defects in the agreement. Correctable defects include, but are not limited to:
 - a. Percentages of work to be performed by the SBE not indicated; and
 - b. Scope of work/commodity not identified for SBE subcontractor (or SBE venturer); and
 - c. Missing signatures.
2. A bidder shall not receive credit towards meeting an SBE subcontract goal for SBEs listed in defective agreement(s) that are not corrected within 48 hours of bid submission.
3. A bidder shall not receive credit towards meeting an SBE subcontract goal for any SBE for whom an agreement has not been submitted at the time of bid submission.
4. A bidder whose bid fails to meet a goal, in order to remain eligible for award of the contract, must submit evidence, with its bid proving lack of availability of SBEs.
5. Inability of a SBE to obtain performance bonding and a bid guarantee at the bidder's request may not be sufficient proof of the SBEs lack of availability.
6. A successful bidder that is an SBE may meet 100% of the subcontractor goal. A bidder that is a joint venture with one or more SBEs may comply with the goal to the extent of the SBE venturers' participation in the ownership, control and profits of the joint venture.

7. Bid documents shall provide that:
 - a. Only expenditures to subcontracting SBEs for performing a commercially useful function shall be counted toward meeting a subcontractor goal,
 - b. Expenditures to subcontracting SBEs who subcontract work further to non-SBEs shall not be counted toward meeting a specified goal unless such subcontracting receives prior approval from the DBD.

Periodic Review Bid Preference/Selection Factor Review

After award, projects on which a bid preference/selection factor is applied, DBD shall quarterly conduct a periodic review of contracts and will prepare a report to the issuing department and/or DPM director.

1. DBD submits a weekly report of all projects with a bid preference/selection factor to the Review Committee (RC).
2. DBD advises DPM via memorandum to DPM that a bid preference or selection factor is applicable to the project(s).
3. Periodic review of a random selection of projects greater than \$50,000 based on every other contract up to 50 contracts issued during the reporting period.
4. If a SBE was not awarded the project, DBD will request the bid tally sheet from DPM to verify whether the bid preference and/or selection factor was applied and note the reasons for the award to the SBE or non SBE.

Micro Enterprise (ME) Usage Report Review Process

The review of reports for the utilization of Micro Enterprises shall inform departments failing to meet the requirements, and shall report awards to Micro Enterprises to the BCC.

1. Purchasing data extracted from ADPICS Mainframe on or about the 10th of each month.
2. The report contains the following:
Commodity Code, Commodity Name, Purchase Order Number, Vendor Name, Certification Status, Purchase Order Amount, ME percentage (%) to total and justification for not awarding to ME
3. Staff will review the report of each issuing department's total purchases and the total percentage of awards to Micro Enterprises.
4. If the 5% requirement is met action is not required
5. If the 5% requirement is not met, DBD will review the Department's Micro Enterprise Usage Report to verify ME availability.

6. If there are no certified MEs, DBD action is not required.
7. If there are certified MEs, DBD shall provide the Micro Enterprise Usage Report via e-mail to the issuing department that lists the commodity where MEs are certified but were not selected.
8. The department shall provide the following justification from the provided legend within 15 days of notice:
 - No Response from ME for that commodity code(s)
 - ME is greater than 10% of a Non-ME
 - Sole Source
 - Bid Waiver
9. Prepare semi-annual report for all Department and present to the BCC.

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CONTRACTS REVIEW AND COMPLIANCE

Monitoring of SBE Goal Compliance

After award, each project, purchase or blanket purchase of goods or service in excess of fifty thousand dollars (\$50,000), shall be monitored for compliance with the approved applicable SBE goals.

1. Issuing department shall notify DBD of the contract award and submit required documents including Bid Award, Notice to Proceed and contract. When applicable, issuing department also notifies and invites DBD staff to attend and present at all pre-work meetings.
2. Staff enters award information into the DBD database and creates file. Project is assigned to staff to begin monitoring process
3. DBD notifies firm that DBD will be monitoring the project and/or attends pre-work when applicable. DBD worksheet for attendance at the pre work is signed by prime to ensure information to ensure knowledge of the procedures and provisions.
4. DBD begins a site visit monitoring schedule. Sites are visited, employees interviewed, and the gathered information is logged into the DBD database on a case specific basis.
5. In house auditing is performed after the site visits. Auditing includes a review of the Utilization Report (UR) submitted by the prime vendor. Should a firm fail to submit a UR, violations procedures (NOV) are followed.
6. An audit requires an initial review of a project's compliance. Dollars paid to the prime vendor are compared to the dollars paid to the sub vendor. While final compliance cannot be ascertained until the final completion of the contract, DBD shall continue to monitor throughout the duration of the project to help ensure a firm meets their goal.
7. If a project is more than 50% complete and the attaining the goal is uncertain, DBD sends a letter advising the prime of the deficit and requesting a plan of action to ensure compliance.
8. In addition to reviewing the dollars paid, the UR is also reviewed for use of appropriate firms and SBE certification status. Again, should a discrepancy be noted or a violation detected, NOV procedures take place.
9. A final measure to ensure good auditing is performed includes requests for information validating the UR report. Such information may include copies of cancelled checks, invoices, bills, etc.
10. Follow-up telephone calls are placed periodically to the managing agency to ensure the dollars reported as paid to the prime are correct. Questions are also asked as to performance and payment.

Notice of Violations Under SBE Program

1. NOV Issued: NOVs may be issued for a variety of non compliance matters including:
 - a. Failure to submit Utilization Reports (UR)
 - b. Not utilizing the approved SBE
 - c. Not paying timely
 - d. Not performing a Commercially Useful Function
 - e. Not submitting requested documents
 - f. Not maintaining your certification while performing as an SBE
 - g. Modifying the terms and/or prices of payment to a SBE without prior approval from DBD;
2. In response to an NOV, a firm may take the corrective action as stipulated in the NOV by the required date or in the alternative, request a compliance meeting whereby they may meet with DBD representatives to discuss and/or challenge the NOV. Additional documents may be submitted for DBDs review.
3. DBD shall review the information discussed at the compliance meeting and issue either a Retraction based on the additional information or a Notice of Final Determination upholding the NOV.
4. If a retraction was issued in #3 above, no further action is required. If a Final Determination is sent, the firm in violation may at that point agree to the NOV and take the corrective actions as outlined in the NOV or in the alternative, Appeal.
5. Should the firm agree with the NOV/Notice of Final Determination and take Corrective actions, it will be specific to Violation type. i.e. Submit payment to firm with appropriate interest for those cases of prompt payment violation. Failure to meet goal requires a make up plan to be submitted to the County for review and approval prior to the issuance of any new award.
6. Should the firm choose to appeal (see step 4), a letter must be sent to the Director of DBD, stating the Notice of Appeal.
7. Depending on the outcome of the Appeal, County Manager to take action based on recommendations of the Review Committee. If necessary, sanctions may be applied. They include liquidated damages, debarment, loss of certification etc.

CONTACT(S):
Department/Division

Department of Business Development

REFERENCE DOCUMENT(S):

Small Business Enterprise Ordinance #05-29
Administrative Order #3-41

Marsha E. Jackman, Director
Department of Business Development

Date